

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11208 of 1998

Date of Decision: 17-06-2004

LALSING KALUSING RATHOD

Versus

UNION OF INDIA

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Employee : MR P.H. PATHAK

For the Government of India : MR ASIM J PANDYA
MR Y.N. R

PER: BHAVANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this petition, the order of Central Administrative Tribunal, Ahmedabad Bench (CAT) in Original Application No. 663 of 1993 dated June 17, 1998 has been challenged.

2. The grievance of the petitioner is that he worked for 240 days, therefore, termination of his service is contrary to Section 25-F of the Industrial Disputes Act,

Whether Reporters of Local Papers may be allowed to see the Judgment?

1947, as such, reinstatement with continuous service is liable to be ordered. However, CAT held that the petitioner failed to establish that at any given time he was in continuous service for the period of 240 days. Consequently, the application has been dismissed.

3. Through this petition, submissions raised before the CAT have been reiterated. Learned counsel for the parties heard, case file perused. Perusal of particulars of presence of petitioner prepared by the Department of Telecommunications demonstrate that petitioner has worked for 298 days from August 12, 1993 to September 1992 preceding the date of termination, namely, August 12, 1993. Shri Asim J.Pandya, learned counsel for the respondents, contends that the petitioner was part-time worker, therefore, he did not work for 240 days. We do not appreciate this submission, since there is no difference between a part-time worker and full-time worker under Section 2(s) of the Industrial Disputes Act, 1947. Second submission, is that petitioner was engaged against the vacancy of D.L.Chavda, therefore, his case falls under Section 2(oo)(bb), meaning thereby, he was appointed by way of contract for the period D.L.Chavda remained on leave. This defence has not been clearly spelt out in the written statement, nor any other record shown to demonstrate this plea. He has been engaged against regular vacancy and worked for five years. A workman, who serves for 240 days is entitled to protection under Section 25-F of the Industrial Disputes Act, 1947. The petitioner also falls in the same category. He is a workman having put in 240 days preceding the date of termination, therefore, unless provisions of Section 25-F are followed, the termination is liable to be set aside. Undisputedly, Section 25-F has not been followed in this case, therefore, termination is set aside.

4. Next question is whether the petitioner is entitled to backwages. Shri Asim J.Pandya submits that backwages may not be awarded, since the petitioner may not have remained without work during this period, and payment of backwages by public body may not be proper. Shri P.H.Pathak claims full or atleast some part of the backwages. We decline the payment of backwages since we are ordering immediate reinstatement, since retrenchment of petitioner has been set aside, he shall be deemed to be in continuous service from the date of termination. Petitioner to report for duty on June 21, 2004, and the respondents to allow him to join. Rule is made absolute.

There shall be no order as to costs. Direct service is permitted.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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